

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DFSB KOLLECTIVE CO. LTD., et al.,

Plaintiffs,

No. C 11-1046 PJH

V.

YOUSUF BOURNE, et al.,

ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION AND DENYING MOTION FOR DEFAULT JUDGMENT

Defendants.

13 The court has reviewed Magistrate Judge Corley's Report and Recommendation
14 ("report") re plaintiffs' motion for default judgment, as well as plaintiffs' objections to the
15 report. In their objections, plaintiffs DFSB Kollective Co. Ltd., Nega Network, Jungle
16 Entertainment, Woolim Entertainment, Afternoon Music Entertainment, Inc., and Drug
17 Records (collectively, "plaintiffs") argue that defendant Yousuf Bourne ("defendant") should
18 be subject to personal jurisdiction in this court because his actions were "expressly aimed"
19 at California. Judge Corley addressed this argument in the report, stating that "there is no
20 indication that Defendant knew of a California user base or that he exploited that base,"
21 and ultimately concluding that plaintiffs had not met their burden of making a *prima facie*
22 showing of personal jurisdiction. Dkt. 48 at 13, 17. Importantly, the report explained that
23 "[t]he Court is not holding that a foreign plaintiff can never demonstrate that a California
24 court has specific personal jurisdiction of a foreign defendant for making illegal downloads
25 available on the Internet," but instead was merely holding that plaintiffs in this case had not
26 adequately shown "that the Calder purposeful direction test is satisfied." Id. at 17 (referring
27 to *Calder v. Jones*, 465 U.S. 783 (1984)).

²⁸ The Ninth Circuit addressed a similar personal jurisdiction issue in *Mavrix v. Brand*

1 Technologies, 647 F.3d 1218 (9th Cir. 2011). Mavrix involved allegations of copyright
 2 infringement brought in a California court against an Ohio-based celebrity gossip website.
 3 The Mavrix defendant argued that he had no contacts with California and thus was not
 4 subject to personal jurisdiction in California. The court disagreed, finding that the “most
 5 salient” fact was defendant’s “exploitation of the California market for its own commercial
 6 gain.” Id. at 1229. The court noted that “a substantial number of hits to [defendant’s]
 7 website came from California residents,” and further noted that the website displayed
 8 advertisements that were specifically targeted to California residents, which “indicates that
 9 [defendant] knows - either actually or constructively - about its California user base, and
 10 that it exploits that base for commercial gain by selling space on its website for
 11 advertisements.” Id. at 1230. This was enough to show that the Mavrix defendant
 12 “anticipated, desired, and achieved a substantial California viewer base,” making
 13 jurisdiction proper. Id.

14 If plaintiffs were able to show that defendant Bourne “either actually or
 15 constructively” knew about his California user base, Mavrix would control and personal
 16 jurisdiction would be proper in this case. But plaintiffs have not done so. Plaintiffs have not
 17 shown that a substantial number of hits to defendant’s websites came from California, nor
 18 have they shown that defendant’s websites displayed advertisements targeted to California
 19 residents, nor have they provided any other evidence that defendant “anticipated, desired,
 20 and achieved a substantial California viewer base.” The best that plaintiffs have done is
 21 claim that “California is one of the largest markets for Korean music” and that “defendant’s
 22 websites were frequently mentioned as a place to download music on the San Francisco-
 23 based Asian-American community site crunchyroll.com.” See Dkt. 47 at 5. This is not
 24 enough to make a *prima facie* showing that defendant expressly aimed his conduct at
 25 California.

26 The Ninth Circuit recently confirmed its interpretation of the “express aiming” prong
 27 of the Calder test, holding that “the express aiming requirement is not satisfied where it is
 28 merely foreseeable that there will be an impact on individuals in the forum.” Fiore v.

1 Walden, 688 F.3d 558, 577 (9th Cir. 2011). Instead, plaintiffs must show that there was
2 “individual targeting” of forum residents. Id.

3 Thus, the court OVERRULES plaintiffs’ objections to Judge Corley’s report and
4 ADOPTS it in every respect. The court finds the report correct, well-reasoned, and
5 thorough, and adopts it in every respect. Accordingly, plaintiffs’ motion for default judgment
6 is DENIED for lack of personal jurisdiction.

7 The court is inclined to dismiss this case without prejudice in light of the denial of this
8 motion, however before doing so, the court will afford plaintiffs an opportunity to request
9 another disposition. Accordingly, plaintiffs shall file a status statement indicating how they
10 would like to proceed with this case no later than September 24, 2012.

11 **IT IS SO ORDERED.**

12 Dated: September 13, 2012



13 PHYLLIS J. HAMILTON
14 United States District Judge

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